

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Rev. Appln. No. S – 79 of 2018

Date	Order with Signature of Hon'ble Judge
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For hearing of case

1. For orders on office objection at flag 'A'
2. For hearing of main case
(notice issued)

20.01.2020

Mr. Muhammad Iqbal Memon Advocate for applicant/complainant
Private respondents Muhammad Ramzan, Abbas, Muhammad Ayaz
and Imran Khan are present in person
Mr. Shafi Muhammad Mahar, DPG for the State

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Amjad Ali Sahito, J:- Through instant Criminal Revision application, the applicant/complainant has impugned the order dated 27.08.2018 passed by learned 1st Additional Sessions Judge, Naushahro Feroze, whereby his direct complaint for prosecution of the private respondents under Section 3 and 4 of the Illegal Dispossession Act, 2005, has been dismissed.

2. The facts in brief are that the applicant/complainant filed direct complaint against the private respondents for their prosecution for having committed an offence punishable under Section 3 and 4 of Illegal Dispossession Act, 2005. It is stated that the father of the applicant/complainant being the owner of agriculture land S.No.15/1 to 4 (1-13) Acres situated in deh Kot Bahadur, Taluka Bhiria was in possession, whereas, his father died and after his death the said landed property was

devolved upon the applicant/complainant and other legal-heirs. The father of applicant/complainant also owned an area of (2-26) Acres out of S.No.15/1 to 4 situated in same Deh through compromise decree dated 02.6.2000 passed in F.C Suit No.116/1996 re- Dr. Fazal Muhammad and others vs. Qadir Bux and others by the Court of learned Senior Civil Judge Naushahro Feroze. The private respondents were annoyed on compromise decree and issued threats for forcible dispossession, whereas, their father remained silent and did not challenge the said decree. It is alleged that after the death of their father, the private respondents 1 to 4 put evil eye upon the landed property of the applicant/complainant, whereas, the land was cultivated by applicant/complainant. The applicant/complainant approached the Mukhtiarkar (Revenue) Bhiria for mutation of land by moving application dated 19.06.2015, but their application was forwarded to District Attorney Naushahro Feroze, as such the District Attorney gave opinion that the decree is badly time barred, hence on the instructions of private respondents 2 to 4 changed the khata in the names of private respondents 1 to 4 and their five sisters. The applicant/complainant had grown Cotton, Sugarcane crops, whereas, on 02.5.2017 at Fajar time, the applicant/complainant along with Gulzar s/o Chibhar Khan, his brother Abdul Razak were available at the land, when the private respondents 1 to 9 along with 15 unknown persons armed with deadly weapons came there and made aerial firing to create harassment, caused kicks, fists and butt blows to applicant/complainant and forcibly dispossessed them. The

Zamindar of the area namely Shah Nawaz Rajput entreated the private respondents and rescued the applicant/complainant party, whereas, the private respondents 5 & 6 set hedges and have constructed their houses in the land, the private respondents have also occupied 200 maunds of Wheat Fodder and after the departure of the accused persons, the applicant/complainant approached at P.S but his FIR was not registered, therefore, he filed the direct complainant with the prayer that the private respondents have committed a cognizable offence, therefore, they may be prosecuted under the Provisions of Sections 3 and 4 of the Illegal Dispossession Act, 2005, for restoration of possession of the aforesaid landed property.

3. Learned 1st Additional Sessions Judge, Naushahro Feroze after calling the reports from the Mukhtiarkar Revenue as well as SHO Police Station concerned, dismissed the direct complaint vide his order dated 27.08.2018, which is impugned by the applicant/complainant before this Court by way of instant Criminal Revision Application.

4. Learned counsel for the applicant/complainant contended the learned trial Court without considering the material aspects of the case has passed the impugned order in a hasty manner and has believed the false report of the Mukhtiarkar (Revenue); that the applicant/complainant was in possession of the land since last ten years; that the private respondent No.1 is ADPP in the same Court; that the learned trial Court while issuing the notices to the private respondents has committed

illegality, which is not curable under the law; that the learned trial Court has not considered the statement of the independent witness Rana Shah Nawaz. He lastly contended that the impugned order has been passed under the influence of private respondent Muhammad Ramzan, who is ADPP in the same Court and under his influence the Mukhtiarkar (Revenue) has mutated the record of rights in favour of the private respondents. Learned counsel lastly prayed for setting-aside of the impugned order and prosecution of the private respondents as they have committed a criminal offence.

5. Learned DPG for the State and the private respondents prayed for dismissal of the instant Criminal Revision Application by contending that the applicant/complainant and the private respondents being the members of one and same family are the co-sharers in the disputed landed property, therefore, the question of dispossession does not arise; that the parties have already filed civil suits against each other; that the applicant / complainant wants to convert the civil litigation into criminal with an intent to drag the private respondents in false criminal litigations; that there is nothing on record that the private respondents are land grabbers or Qabza group, hence the provisions under the Illegal Dispossession Act are not applicable in the present case. They lastly contended that the impugned order passed by the learned trial Court is very much speaking, hence the same is liable to be maintained.

6. I have considered the arguments of the learned counsel for the respective parties and perused the record. The Illegal Dispossession Act 2005 is a special legislation to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by the land grabbers or Qabza group. Admittedly, the private respondents as well as the applicant / complainant are the co-sharers in the disputed property, hence the facts stated by the applicant / complainant do not fall within the definition of land grabbers / Qabza group. The applicant/complainant as well as the private respondents are related to each other being members of one and same family. The parties have already sued each other by filing civil suits, whereas, the applicant/complainant in order to convert the civil litigation into a criminal litigation with intention to drag the private respondents into dual litigation i.e. civil and criminal has filed the instant direct complaint. In this regard, reliance upon the case of ***Bashir Ahmed vs. Additional Sessions Judge, Faisalabad and 4 others (P L D 2010 SC 661)***, wherein the Honourable Apex Court has held as under;

“It has been held by a Full Bench of Lahore High Court, Lahore in the case of Zahoor Ahmed and 5 others vs. The State and 3 others PLD 2007 Lah. 231 that the Illegal Dispossession Act, 2005 has no application to cases of dispossession between co-owners and co-sharers and also that the said Act is not relevant to bona fide civil disputes which are already sub-judice before civil or revenue Courts. It had also been declared by the Full Bench of the Lahore High Court, Lahore in that case that the Illegal Dispossession Act, 2005 was introduced in order to curb the activities of Qabza groups / property grabbers and land mafia. It has been

conceded before us by the learned counsel for the petitioner that no material is available with the petitioner to establish that respondents Nos.2 to 4 belonged to any Qabza group or land mafia or that they had the credentials or antecedents of being property grabbers. In the circumstances of this case mentioned above we have entered an irresistible impression that through filing of his complaint under the Illegal Dispossession Act, 2005 the petitioner had tried to transform a bona fide civil dispute between the parties into a criminal case so as to bring the weight of criminal law and process to bear upon respondents Nos. 2 to 4 in order to extract concession from them. Such utilization of the criminal law and process by the petitioner has been found by us to be an abuse of the process of law which cannot be allowed to be perpetuated.”

7. In view of the above, the impugned order dated 27.08.2018 passed by learned trial Court does not call for any interference by this Court, which is maintained. Consequently, the instant Criminal Revision Application is dismissed.

Judge